IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.137 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
MAHENDRA MILLS LTD - Respondent(s)

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Appearance :
MS MM BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 03/10/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'C', has referred the following question under Section 256(1) of the Income-tax Act, 1961

(the Act) at the instance of the Commissioner of Income-tax:

> "Whether, the Appellate Tribunal is right in law setting aside the order made by the Commissioner of Income-tax and holding that depreciation at the normal rate of 30% was allowable on old diesel generating set ?"

2. The Assessment Year is 1983-84 and the relevant accounting period is the year ended on 30th June, 1982.

3. Heard Ms.M.M.Bhatt, learned Standing Counsel for the applicant-revenue. Though served there is no appearance on behalf of the respondent-assessee.

4. As can be seen from the order dated 2nd November, 1992 of the Tribunal, the Tribunal has followed its earlier decision in the case of *Nachmo Marketing Private Limited.* Ms.Bhatt has pointed out that the case of *Nachmo Marketing Private Limited* had been carried before this Court by

way of reference being I.T.R. No.187 of 1993, and that the said reference had been answered in favour of the revenue by a decision dated 21st June, 2005.

5. Applying the ratio of the aforesaid decision, the reference is answered in the negative i.e. in favour of the revenue and against the assessee. The Tribunal was not right in law in setting aside the order made by the Commissioner of Income-tax and holding that depreciation at the normal rate of 30% was allowable on old diesel generating set.

6. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**